

**TOBIN, SULLIVAN, FAY & GRUNEBAUM**

ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION OF INDIVIDUAL PRACTITIONERS\*

60 WILLIAM STREET, SUITE 330

WELLESLEY, MASSACHUSETTS 02481

TELEPHONE (781) 237-0877

FACSIMILE (781) 237-1101

DAVID S. TOBIN, P.C.  
THOMAS F. SULLIVAN  
DAVID F. GRUNEBAUM  
ANDREW J. FAY  
JILL M. SCHAFER

February 21, 2008

Kate Fitzpatrick, Town Manager  
Town of Needham  
1471 Highland Avenue  
Needham, MA 02492

Dear Kate:

You ask my opinion as to whether or not the 58 acres leased to the Needham Golf Club (Club) are subject to Article of Amendment 97 of the Constitution of the Commonwealth.

Article of Amendment 97 of the Constitution of the Commonwealth of Massachusetts amends Article of Amendment 49 and provides in part the following:

ART. XLIX. The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose...

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

The 58 acres are subject to Article 97, because the land was acquired in 1899 for water supply purposes, i.e. to protect the watershed for what was then the Town's water supply.

Secondly, you ask to what uses the property can be put without a special law enacted by a two-thirds roll call vote of the General Court.

The property can be used for water supply purposes and for a golf course. This is because it was acquired for water supply purposes and has been used as a golf course since prior to the enactment of Article 97.

\*EACH ATTORNEY IN THIS OFFICE IS AN INDEPENDENT PRACTITIONER WHO IS NOT RESPONSIBLE FOR THE PRACTICE OR THE LIABILITY OF ANY OTHER ATTORNEY IN THE OFFICE

169  
RECEIVED  
TOWN OF NEEDHAM  
BOARD OF SELECTMEN  
2008 FEB 22 P 12:15

TOBIN, SULLIVAN, FAY & GRUNEBAUM

Kate Fitzpatrick, Town Manager  
Page 2  
February 21, 2008

Although the land started to be used as a golf course in 1901, the Town and the Club entered into their first lease for the land in 1940, as authorized by the 1939 Annual Town Meeting. Since that time the Town and the Club have entered into successive leases to date.

Article of Amendment 97 of the Massachusetts Constitution was adopted in 1972. It rewrote the original Article of Amendment 49 of the Massachusetts Constitution. The provisions of Article of Amendment 49 as amended by Article of Amendment 97 have been interpreted to apply to lands acquired prior to 1972 (See: Opinion of the Justices to the Senate, 383 Mass. 895 (1981), but not apply to use of land for other purposes or disposed of prior to the effective date of Amendment 97. (See: Newburyport Redevelopment Authority v Commonwealth 9 Mass. App. Ct. 206 (1981).

The use of the land is further restricted by the Town's zoning by-laws. The land is in a Single Residence B District. The by-law does not specifically allow golf courses in the Single Residence B District. The by-law allows not-for-profit clubs. Further, the property has been used continuously as a golf course by a not-for-profit club since before the inception of zoning. Thus, its use as a private not-for-profit club is an allowed use and if not a presently allowed use, the golf course would have the status of a pre-existing lawful non-conforming use allowed under M.G.L.A., Ch 40A and the applicable zoning by-laws.

You ask if the 58 acres were relieved of its restrictions under Article 97 of the Constitution to what uses could it be put.

If the restrictions under Article of Amendment 97 were removed, the property could be used legally for any purpose allowed under the Town's zoning by-laws in a Single Family Residence B District. Its use would still be restricted by the State Wetlands Act and the Town's Wetlands' by-law. It could continue to be used as a golf course by a not-for-profit club.

Finally, you ask if the legislature passed a law by a two-thirds roll call vote allowing the property to be put to a use other than those allowed under Article 97, would it be subject to the "no net loss" guidelines of the Department of Environmental Affairs.

TOBIN, SULLIVAN, FAY & GRUNEBAUM

Kate Fitzpatrick, Town Manager

Page 3

February 21, 2008

Based on our recent meeting with the Department of Environmental Affairs Secretary Ian Bowles regarding the Ridge Hill legislation, the Governor would require that there be included a "no net loss" provision in the act before he would sign it. Thus, if the Town was successful in having a law passed under Article 97, it is probable that the Governor would amend the bill requiring the Town to dedicate 58 acres of other land to the purposes set forth in Article 97.

I hope this answers all of your questions. If not, please let me know and I will supplement this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David S. Tobin", written in a cursive style.

David S. Tobin  
Town Counsel

DST/eb